

Holstered Guns Don't Kill

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Policing is a dangerous job. The majority of police officers in this country are honorable and brave. They work diligently to keep our communities safe and need discretion in fulfilling their important duties. Most reasonable people would agree on these points. The U.S. Supreme Court certainly has, giving the police a wide berth in use-of-force cases because "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

But the law is crystal clear about another thing: an officer's use of force must be objectively reasonable. And though it may sound obvious to say, the use of force by the police often starts with drawing a gun. Drawing a loaded weapon is a bright line, the first step toward violence. If one civilian did it to another, he could and likely would go to jail.

We have all seen the videos of police shootings of unarmed civilians in the past year. I have watched them all. The tragedies unfold in moments, sometimes seconds. And they each begin with a common, core fact: a police officer has drawn and pointed a loaded weapon at a fellow citizen.

True, in some instances, the officers may fear the civilian has a gun or is trying to reach for one. But, time and again, these suspicions unravel only after the victim is dead or dying. We will never know how much of the officer's fear in each situation is based on the actual circumstances on the ground, a fundamental lack of training, or plain old bigotry.

If these tragedies invariably begin with an unholstered firearm, you might expect that strict rules govern when an officer is permitted to draw it (as opposed to, say, batons, pepper spray, Tasers, or even physically tackling the person). But the sad reality is: there are no rules. Despite years of press coverage about this issue (including articles in *The New York Times* in 2000 and 2014), the NYPD, like most jurisdictions, lacks any sort of official guidance or regulations governing circumstances in which an officer can draw down on a civilian. Individual officers are permitted to make individual judgments based on the "circumstances" surrounding his or her own interactions with individual civilians.

I have used the word "civilian" intentionally. In most recent cases, the police were not interacting with a fleeing felon or someone in the midst of committing a crime. The victim was just an ordinary person on the street or in a car, doing something that caught an officer's attention. Often, it was someone who did not obey the officer's command. That is not a capital offense. Nor is it an objectively reasonable basis to draw a weapon on a member of the very community the officer is supposed to protect.

Oddly, our government officials do not understand or appreciate the complete absence of a uniform or knowable standard for police to follow in making that first decision to draw down. Both the President's Task Force on 21st Century Policing and recently introduced legislation in Congress (the "Preventing Tragedies between Police and Communities Act of 2016") ignore the problem entirely. After a two-year investigation of the Cleveland Police Department, where it found a systemic problem of excessive force by the police against communities of color, the Department of Justice "required" the Cleveland Police to devise "policies and training" for "unholstering, displaying, pointing, and aiming a firearm, and for determining when it is appropriate to do so." Yes, you read that correctly: the DOJ left the creation of the standard to the very agency it was accusing of being racist rather than creating the standard itself. With 18,000 police departments and other law-enforcement agencies in the United States, the DOJ cannot investigate every one, nor does a patch-work of 18,000 different standards make any sense at all.

No one wants to put police officers in jeopardy or prevent them from protecting themselves or others in dangerous situations. But a clear-eyed reassessment of risk is in order. In 2015, according to FBI data, 42 police officers died in the line of duty in this country during hostile shootings. That same year, police in this country shot and killed 986 people, according to a study by the *Washington Post*.

To be sure, the national statistics deserve more analysis. But the data do not support a conclusion that officers face greater peril when approaching unarmed civilians than the videos we have seen suggest. We cannot allow police to operate under the presumption that every civilian is dangerous. Further, we should not permit the police—for the general sake of "officer safety"—to draw a firearm on an unarmed civilian as a first instinct, rather than a last resort. Police should be prohibited from drawing their guns unless an officer has a specific and articulable basis to believe someone is in imminent risk of deadly harm. It is time for the federal government to impose a uniform standard, requiring police to keep their guns in the holster until they actually need them.

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